

US EPA ARCHIVE DOCUMENT

**SURVEY OF STAKEHOLDER INVOLVEMENT
IN RULEMAKING AT EPA**

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Preface

The following document is a summary of the findings of a survey of stakeholder involvement that was conducted during the summer of 1998. This document was prepared for use as a companion piece to a presentation that was made to the Steering Committee on January 13, 1998.

INTRODUCTION

The Need for a Survey on Stakeholder Involvement in Rulemaking

The need for the stakeholder involvement survey arose out of recent criticisms by stakeholders, particularly those noted by the CSI stakeholder involvement workgroup. The CSI workgroup's criticism is summarized as follows:

- The same set of stakeholders are asked to participate in stakeholder involvement activities over and over again which has caused stakeholder burnout.
- The link between stakeholder involvement and final decisionmaking is often not apparent.
- There appears to be a lack of internal Agency communication regarding recommendations made by stakeholders and stakeholders have found that they have had to repeat themselves over and over again to different persons in the Agency.

The survey sought to confirm these allegations in part and to merely assess stakeholder involvement in rulemaking. The primary intent of the survey was to find deficiencies in the stakeholder involvement process being used and determine ways to improve the process. In addition, information gathered through the survey process would be added to the RIS under a new stakeholder involvement heading.

The Survey Group

The Regulatory Agenda for April 1998 was used to identify current regulatory actions. Those rules that were either in the proposal stage or had recently been completed qualified as appropriate for the study. Of the 214 rules, 110 workgroup chairs were solicited to participate in the survey. Seventy-four staffpersons from all four different offices agreed to participate.

Limits of the Survey

There were three general limiting factors that may have affected the findings of the survey. They are as follows:

- Some staff showed a limited understanding of stakeholder involvement which limited the detail of their responses.
- There was some observable staff paranoia of being judged or implicating their Office of having poorly trained staff. This may have resulted in responses that do not accurately reflect reality.
- Rule type and Office will affect the response frequency of particular questions. Different Offices operate differently and some environmental regulations, such as the Clean Air Act, require particular stakeholder involvement activities.

SUMMARY OF FINDINGS OF STAKEHOLDER INVOLVEMENT SURVEY

The survey was organized into five sets of questions designed to gather information regarding stakeholder involvement activities in rule making and rule writer experiences with stakeholder involvement. The following presents the five sets of questions, staff responses, and conclusions derived from the responses. Major conclusions are presented first, then survey questions and responses follow.

Question Set I: Type and Purpose of Stakeholder Involvement

Major Conclusions

The results of the survey found that stakeholder involvement in rulemaking is primarily in the form of outreach and information exchange. However, most respondents felt that the information exchange that they were involved in was better described as a cross between exchanging information with stakeholders and receiving recommendations from stakeholders. The majority of respondents felt that the type of stakeholder involvement they conducted was initiated by stakeholders, considered the general practice of the office, or required by statute or litigation settlement. This implies that rule writers are not planning or developing their own stakeholder involvement and are instead performing stakeholder involvement as requested or required. It also suggests that rule writers are not going through their own decision analysis in regard to stakeholder involvement. This can result in stakeholder involvement processes that do not fit the need for the stakeholder involvement. It can also cause stakeholder processes to be initiated with no link to the decision making process. That is, the rule writers conduct the stakeholder involvement to fulfill a requirement or request but have no intention of incorporating stakeholders' input in the decision. Unless otherwise communicated, this can cause stakeholders that have committed time and energy to the process, to become frustrated and annoyed. This is consistent with the CSI's criticisms.

Survey Questions and Responses

Question 1. What is the purpose of the stakeholder involvement in this rulemaking?
(Choose one or more)

- (a) Outreach - To provide information, data, regulatory text, and background to the stakeholders.
- (b) Information Exchange - To exchange information and ideas between EPA and stakeholders. Primarily used to educate the public and enhance EPA's understanding of stakeholders' positions, needs, and wants.
- (c) Recommendations - To obtain a joint recommendation from multiple types of stakeholders that is then used by EPA to inform the rulemaking. (Often triggers FACA).
- (d) Agreements - To reach a consensual agreement among EPA and stakeholders that all parties commit/promise to implement. (Generally regulatory negotiation)

Response to Question 1:

- (a) Outreach - 93%
- (b) Information Exchange - 74%
- (c) Recommendations - 18%
- (d) Agreements - 10%

Question 2. What influenced your decision to conduct the kind of stakeholder involvement that you performed?

Response to Question 2:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

Reacted to stakeholder demands -	28%
General practice of the Office/directed by senior management -	36%
Seemed to be the best thing to do -	35%
Statute Requirement (APA or other) -	14%
Litigation Settlement/Court Order -	07%

Question 3. Is the stakeholder involvement being conducted solely to comply with Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act amendments, Unfunded Mandates Reform Act, or one of the Executive Orders (Regulatory Planning and Review, Enhancing the Intergovernmental Partnership, Environmental Justice, Children's Health Protection)?

Response to Question 3:

- Yes, for SBREFA - 11%
- No - 89%

Question Set II: Who (Which Stakeholders) Are Involved and How Are They Identified?

Major Conclusions

Medium to large businesses/industries, trade associations representing them, state government agencies and EPA regional offices are most frequently involved in rulemaking at EPA. Small businesses, trade associations representing them, national environmental groups and local government agencies are involved in rulemaking approximately 50 percent of the time. All other stakeholder groups are involved less than 40 percent of the time. For the most part, rule writers are rarely seeking out stakeholders but instead using existing Office/Agency lists of stakeholders, lists from previous rulemakings or stakeholders are identifying themselves by contacting Agency staff in anticipation of upcoming regulatory actions. Similarly, the survey results show that staff rarely uses divisions such as OSOSLR, AIEO, Public Affairs, or SBO to identify stakeholders that may be relevant to the regulatory action. Few staff felt that they contacted stakeholders

beyond the “usual suspects.” By using existing lists of stakeholders as the primary tool for contacting stakeholders, there is little assurance that stakeholders not on a list will become involved. Similarly, consistent with recent complaints by stakeholders, the same set of stakeholders end up being asked to participate over and over again which can result in stakeholder burnout. It is important to note, however, that not all stakeholder groups are relevant to a rulemaking and thus, do not always need to be incorporated into the stakeholder involvement process.

Survey Questions and Responses

Question 4. Which of the following stakeholders participate(d) in stakeholder involvement?

Response to Question 4:

(a) Businesses/industries (medium to large)	74%
(b) Small Businesses/industries	47%
Trade Associations representing:	
(c) Businesses (medium to large)	71%
(d) Small Businesses	42%
Environmental Organizations:	
(e) National Groups (Sierra Club, NRDC)	53%
(f) Local Groups (community groups)	19%
(g) EPA Regional Offices	67%
(h) Federal Agencies	36%
State Governments:	
(I) Elected	-
(j) Agencies	72%
Local Governments:	
(k) Elected	-
(l) Agencies	46%
(m) Small Governmental Jurisdictions (towns)	06%
Tribal Governments:	
(n) Elected	-
(o) Agencies	24%
(p) Government Associations (STAAPA/LAPCO)	39%
(q) Regional Quasi-Government Groups (air districts)	18%
(r) Standards Setting Organizations (ASTM)	08%
(s) Scientists and Academicians	40%
(t) Labor Advocates	13%
(u) Public Health Advocates	25%
(v) Environmental Justice Advocates	11%
(w) International Organizations	11%
(x) Other:	-

Question 5a. How did you identify stakeholders that were relevant to this rulemaking?

Response to Question 5a:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

Used list of stakeholders from previous rulemakings -	44%
Stakeholders identified themselves -	22%
Used an Office/Division list of stakeholders -	10%
Relevant stakeholders were obvious (industry groups) -	15%
Consulted with obvious stakeholders to get referrals -	33%
Stakeholders responded to federal register notification -	04%
Used the Internet -	01%

Question 5b. Did you consult with OSOSLR, AIEO, SBO, Public Affairs division or EPA regional offices to identify stakeholders?

Response to Question 5b:

EPA Regional Offices -	16%
SBO -	08%
AIEO -	03%
OSOSLR -	01%
Public Affairs division -	-

Question 5c. Did you go beyond the usual suspects in identifying stakeholders (Did you invite less obvious stakeholders, secondary stakeholders such as valve makers, industry innovators to participate)?

Response to Question 5c:

No -	74%
Yes -	26%

Question Set III. How and When Does Staff Implement Stakeholder Involvement?

Major Conclusions

As shown in the results of Question Set I, the majority of rule writers are conducting stakeholder involvement to provide or exchange information with stakeholders. Rule writers conducting outreach primarily use the internet/websites and fact sheets/newsletters to disseminate information to stakeholders. Those rule writers conducting information exchange generally have conference calls with multiple stakeholders, attend conferences or meetings formed by stakeholders, and hold technical workshops or joint fact-finding sessions. Rule writers interviewed were cautious to admit that they held meetings with multiple stakeholders for fear of being considered in violation of FACA, though some admitted it was an effective way of consolidating meetings and reaching decisions faster by getting broad input all at once. They also felt that stakeholders benefited from hearing the

different points of view from different stakeholder groups. Though few in number, rule writers engaged in recommendation-seeking activities use standing FACAs or policy dialogues.

Nearly all rule writers surveyed conduct stakeholder involvement very early on in the rule making process, well before a rule is proposed in the federal register. Rule writers indicated that often stakeholders would review and comment on drafts of the proposed regulation prior to federal register notification. This implies that often stakeholders have a significant influence in developing proposed rules. Potential for such influence in the decision making process can make it worthwhile for those stakeholders participating but can also disadvantage those that are excluded from the process.

Survey Questions and Responses

Question 6. Which of the following stakeholder involvement activities have you conducted or plan to conduct?

Response to Question 6:

Outreach Activities:

(a) ANPRM Notice and Comment	04%
(b) NPRM Notice and Comment	100%
(c) Fact Sheets/Newsletter	61%
(d) Websites	65%
(e) Email listserves	28%
(f) Conference Presentations	22%
(g) Public Hearings	14%

Information Exchange:

(h) Public Meetings	32%
(I) Forums, Workshops, Task Forces	38%
(j) Conference Calls with Multiple Stakeholders	63%
(k) Meetings with Multiple Stakeholders	25%
(l) Meetings, Conferences and Working Groups formed by Stakeholders (Trade association meetings)	35%
(m) Meetings/Calls with Individual Stakeholders	65%
(n) Internet Chatrooms	28%
(o) Technical Workshops and Joint Fact-finding Sessions	19%
(p) Site Visits to Facilities	42%
	17%

Recommendation Generating Activities:

(q) Standing FACA Committee Review	14%
(r) Policy Dialogue Committee (FACA for rule)	01%
(s) Forums, Workshops, Task Forces	-

Agreement Generating Activities:

(t) Reg Neg	-
(u) Settlement Negotiations	08%
(v) Statement of Principle	-
(w) Other:	

Question 7. At what stage in the rulemaking process did you begin the stakeholder involvement?

Response to Question 7:

Very early on/ prior to proposal being published in the federal register -	92%
After proposal was published in the federal register -	08%

Question Set IV. What Are the Challenges and Lessons Learned in Involving Stakeholders in Rulemaking

Major Conclusions

Rule writers found that the greatest challenges were coordinating and planning stakeholder involvement activities as well as getting stakeholders to collaborate with EPA and other stakeholder groups. Similarly, staff found that controlling the length of the rulemaking process was difficult with stakeholder involvement. Consistent with staff's recognition that stakeholder involvement is most often initiated by the request of stakeholders or other Agency staff, they felt they had little control over keeping to a timeline. They often found that towards the end of the process there would be requests for additional meetings that could not be ignored. Staff also found it very difficult to find times to get all stakeholders together and that would often draw out the timeline. Staff found that it was often difficult to get smaller stakeholder groups, with less resources and time to commit, involved. Staff found that a lack of education in regulatory matters on the part of smaller stakeholder groups also presented a challenge in getting them to participate fully. Another challenge staff has found is managing inconsistent messages sent from EPA to stakeholders. Staff has found that at different levels of the Agency and in different actions, stakeholders will be told different things, particularly regarding EPA's intent to involve stakeholders in decision making. In some cases, rule writers have felt that their message to stakeholders has been undercut by differing messages sent to the same stakeholders from other levels within the Agency. This lack of internal communication is consistent with observations and criticisms of CSI.

Despite these challenges, staff, for the most part, did not make changes to their stakeholder involvement process. The few that did worked to clarify Agency messages, while others worked to improve stakeholder involvement activities to reduce the burden of long drawn out timelines and increase participation. This indicates that staff is willing to accept the difficulty of stakeholder involvement rather than attempt to make changes that could reduce the challenges. This may simply be due to staff not having the time or resources to make changes or it may be that staff does not know what changes they could make.

Survey Questions and Responses

Question 8. What sorts of challenges have you faced in conducting stakeholder involvement?

Response to Question 8:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

Identifying stakeholders -	09%
Planning and coordinating stakeholder involvement activities -	24%
Keeping the length of the process reasonable -	24%
Getting particular stakeholder groups to participate -	18%
Getting stakeholders to collaborate -	28%
Getting stakeholders to provide complete information -	11%
Educating stakeholders so they could participate fully -	16%
Overcoming inconsistent messages sent from EPA to stakeholders -	16%
None -	14%

Question 9. Did these challenges result in changes to your stakeholder involvement and how?

Response to Question 9:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

No changes made -	46%
Changed stakeholder involvement activities and planned ahead -	19%
Clarified EPA ' s message -	19%
Involved more stakeholders -	05%
Used a neutral -	04%
Provided money or resources to stakeholders -	03%

Question Set V. How Can Stakeholder Involvement at EPA be Improved?

Major Conclusions

Despite challenges and difficulties faced by staff in conducting stakeholder involvement, many staff felt that they would not do anything different in a similar rulemaking. Some staff indicated that they would develop a stakeholder involvement plan the next time around and others thought they would identify more stakeholders and start stakeholder involvement even earlier. Staff generally felt that the Agency could improve stakeholder involvement by providing training and guidance to rule writers and senior management, providing more resources and support for stakeholder involvement, and coordinating messages within the Agency that are sent to stakeholders. In regard to training, staff noted that they would not want to see training become a requirement.

Survey Questions and Responses

Question 10. What would you do differently if you had another similar rulemaking?

Response to Question 10:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

Nothing -	42%
Develop a stakeholder involvement plan -	27%
Identify more stakeholders -	15%
Start stakeholder involvement earlier -	14%
Control information flow -	07%
Use a neutral -	04%
Receive more support from senior management -	01%
Educate stakeholders -	01%

Question 11. In your opinion what could someone do to assist in developing/executing the stakeholder involvement process?

Response to Question 11:

Responses to this question varied. The following provides general categories of response and their frequency. Some respondents had more than one response as reflected below.

Nothing -	34%
Provide stakeholder involvement guidance and training -	28%
Provide more resources for stakeholder involvement -	12%
Coordinate messages from EPA to stakeholders -	09%
Educate senior management on stakeholder involvement -	07%

RECOMMENDATIONS

The following provides suggestions for improving the stakeholder involvement process in rulemaking at EPA. The suggestions are based on the needs identified by staff and observations made from survey responses.

Recommendation I: Plan for Stakeholder Involvement

As Question Set I, II, and III indicated, stakeholder involvement is often conducted as a reaction to a request and the rule writers do not have the opportunity to go through a decision analysis that allows them to determine what type of stakeholder involvement would be appropriate to conduct, who would be appropriate to involve and when it is appropriate to do.

Recommendation: Develop a plan for stakeholder involvement that enables a rule writer to identify the purpose and need for the stakeholder involvement, choose the appropriate type of stakeholder involvement, develop a complete list of potential stakeholders, and develop a timeline for when certain stakeholder involvement activities would occur. The latter action becomes especially important when several different stakeholder involvement activities need to occur over a particular time period such as SBREFA compliance, OMB review, etc. Several steps can be taken during stakeholder involvement planning that can serve to combat some of the challenges faced by staff in conducting stakeholder involvement. The following briefly identifies some of these steps.

In developing a stakeholder involvement plan:

- Consult with stakeholders during the developing stages of a stakeholder involvement plan. During this consultation period rule writers can find out who wants/is able to participate, what kind of activities they will be able to participate in and what type of constraints may limit their involvement (i.e., number of meetings location of meetings). Stakeholders are informed at this time as well about their anticipated role and can evaluate the need for their participation, and what level of commitment they intend to give to the process. Similarly, stakeholders can begin to set aside the resources needed for their participation which in turn may reduce funding needs the Agency. By following through with this step rule writers can determine what resources are needed to get particular stakeholders to participate, who has educational needs, and what timelines are anticipated. This also gives stakeholders an opportunity to prepare for their participation by generating resources that may be needed and setting aside the time. This in turn can end up reducing the cost to the Agency in getting stakeholders to participate. At this point as well the rule writer can get a reading on stakeholders' feelings for the issues related to the regulatory action which can assist the rule writer in assessing which stakeholder involvement activities would be most appropriate.
- Consult with other Agency staff and divisions to find out what messages have already been sent by the Agency to stakeholders regarding the upcoming regulatory action. This can alleviate the potential for crossing messages.
- Consult with other Agency staff and divisions that may have related regulatory actions coming up to coordinate activities. This can reduce the need for multiple stakeholders

- to participate in numerous separate meetings easing the burden on stakeholders.
- Consult with divisions such as AIEO, SBO, OSOSLR and Public Affairs to identify less obvious stakeholders that may be relevant to the rulemaking. As indicated in Question Set II, there are several divisions within the Agency that work with particular stakeholder groups that may serve to assist rule writers in identifying stakeholders.

Recommendation II: Promote a Better Understanding of FACA

Survey responses to Question Set III indicated that a better understanding and more consistent approach to FACA was needed. Some staff had admitted that they were deliberately cautious of involving stakeholders in fear that they would trigger FACA, or violate FACA. Many staff felt that the message from the legal division was different than the message from their own divisions on when and how to use FACA. Staff felt that triggering FACA was something to avoid at all costs. Though, one staff person found great benefit in using FACA to confront other issues in stakeholder involvement. For instance, a FACA subcommittee used to develop a rule allowed funding to be offered to less educated stakeholders which in turn allowed them to be more effective participants.

Recommendation: At the time plans for stakeholder involvement are being drafted provide consultation on whether or not FACA will be triggered. Develop a list for what type of activities can occur without triggering FACA. Encourage staff to think about whether or not their need for stakeholder involvement will be better accomplished through a FACA committee, if their stakeholder involvement goals will be better met using FACA and if there is an existing FACA that could be used to create a subcommittee for developing the proposed rule.

Recommendation III: Provide Agency-wide Stakeholder Involvement Training and Guidance

Staff interviewed indicated a need for more stakeholder involvement training and guidance. It also became clear through the interview process that many rule writers were unclear on the fundamentals of stakeholder involvement. Without a good understanding of the fundamentals of stakeholder involvement, staff can not feel in command of the process nor have the confidence to make decisions about what the process should entail. Many staff indicated through their hesitation in responding to certain survey questions that they lacked the confidence in conducting stakeholder involvement. In addition, the fact that most staff did not do anything to alleviate challenges in conducting stakeholder involvement they indicated that they simply didn't know what could be done. Stakeholder involvement training could at minimum provide staff with more ideas of what can be done in stakeholder involvement. Training should also be offered to senior management. Staff interviewed indicated that despite being directed by senior management to conduct stakeholder involvement, they felt that senior management often lacked the understanding of what their requests entailed and were not able to provide appropriate support and guidance to staff.

Beyond training, there is a need and desire of staff for a stakeholder involvement resource

guide that provides a footprint for planning and implementing stakeholder involvement as well as provides detailed lists of resources within the Agency that can assist in identifying stakeholders and performing stakeholder involvement activities. A stakeholder involvement manual is currently being prepared by CDRP.

Recommendation: Disseminate the stakeholder involvement manual to all rule writers and senior management. To get the most out of a training program, provide each Office with a stakeholder involvement training that is tailored to the special needs of that Office. Because each Office within the Agency operates a little differently and regulations require different methods for rule development, training can be most effective if it is tailored to the special needs of each office. Trainings can be tailored to each office by asking staff within the office to share stakeholder involvement experiences in rulemaking at the outset that will serve as examples to work through.

Recommendation IV: Develop an Internal Information Exchange for Stakeholder Involvement

Responses to survey questions regarding the type of stakeholder involvement, activities being conducted, and which stakeholders are involved have been entered into the RIS database under a new stakeholder involvement heading. The intent of these entries is to provide a central location for staff to be able to find information about the stakeholder involvement that is being conducted for each rulemaking. Sharing such information can lead to coordinating stakeholder involvement activities among different rulemakings and within Offices. Similarly, staff can use the system to access information on what type of activities have been conducted for past rulemakings that are similar to their proposed action. In addition to the RIS, staff could benefit greatly by having an intranet site designed specifically for stakeholder involvement. The site could be used to post stakeholder involvement manuals and guidance documents, provide links to a master calendar of upcoming stakeholder involvement activities within the entire Agency, provide links to a webpage for each Office describing their upcoming stakeholder involvement activities, and provide a network for staff to exchange experiences and lessons learned.

Recommendation 1: Use RIS more effectively to coordinate stakeholder involvement activities within Offices.

Recommendation 2: Provide an intranet exchange site for stakeholder involvement.

Recommendation V: Provide Additional Resources for Stakeholder Involvement Activities

Both staff and stakeholders have indicated that there is a need for additional resources to be allocated to stakeholder involvement activities. Staff felt that less obvious stakeholder groups were absent from stakeholder involvement activities due to a lack of resources. Similarly, smaller stakeholder groups have indicated that they are unable to participate fully due to a lack of resources to attend meetings but also due to a lack of technical understanding of the proposed regulatory action. There is also a need to provide staff with more resources to conduct stakeholder involvement activities. Staff commented that they were expected to perform stakeholder involvement functions with no staff support or money available.

Recommendation 1: During stakeholder involvement planning have staff develop a description of resource needs for both funding and staff support. If funds or staff support are not available to effectively implement the stakeholder involvement planned then changes can be made to the plan prior to its implementation.

Recommendation 2: Establish a grants program in SBREFA and SCOPE to help fund small business and community participation in stakeholder involvement activities, particularly for rulemakings that do not require SBREFA or UMRA panels.